

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

WP(C).No. 28199 of 2007(F)

CMA.1/2006 of SUB COURT, MANJERI
OS.385/1996 of MUNSIFF COURT, MANJERI
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PETITIONER:

PATTERKADAVAN ABDUL AZEEZ, S/O. HAMZA,
PONMALA AMSOM, DESOM, MALAPPURAM DISTRICT.

BY ADV. SRI.SAJU.S.A

RESPONDENT:

KEEMATTATHIL JAMES, S/O. VARGHESE,
VETTELAPARA AMSOM, DESOM, URANGATTIRI,
MALAPPURAM DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.28199 of 2007

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Dated this the 24th day of September, 2007.

JUDGMENT

This Writ Petition is filed seeking to set aside the order in C.M.A.No.1 of 2006 of the Subordinate Judge, Manjeri. The trial court did not find in favour of the application and therefore dismissed the same, but the appellate court granted the relief and directed restoration of the suit.

2. The writ petitioner, it is submitted, was suffering from some sort of mental disorder and he was undergoing treatment. The Doctor was examined and documents were produced and a perusal of the judgment of the Appellate Court would reveal that the plaintiff was suffering from delusional disorder and he had impairment in social judgment and has no ability to analyse the situation and to take apt decision. The Appellate Court considered the matter and reversed the decision of the trial court and directed restoration of the suit. But in the process, it directed the defendants in the suit to pay cost also to the

appellant.

3. It is well settled position of law that broad principles of natural justice must be in the background while ascertaining whether there is sufficient cause. In the decision reported in **Sreedhara Kurup v. Mickel** - 1968 K.L.T. 599, this Court held thus: "It is largely a matter of wise discretion to be exercised by the Court bearing in mind the wholesome principle that the right of a party to be heard should be negated only if there is gross negligence or gross carelessness and that if some steps have been taken and application for restoration has been made with some diligence and some evidence adduced making out a sufficient cause for absence, restoration should be ordered, minor misconduct or laches being corrected by the common curative of costs. The brooding spirit of natural justice must be in the background while ascertaining whether there is sufficient cause. A strict and narrow construction defeats the ends of justice which can be reached only after a fair fight between the disputants." This dictum had been followed by a Division Bench of this Court reported in *Plantation Corporation of Kerala Ltd. v. Hussain* - 1998 (1) K.L.T. 1008 as well.

4. A perusal of the facts and circumstances of the case and the evidence available in the matter would establish that the plaintiff was prevented by a valid cause from attending the court, which resulted in the dismissal of the suit. Therefore, I concur with the Appellate Judge. But I feel that for non-prosecution of the case by the plaintiff and after filing the application for restoration the defendants should not be directed to pay costs. Therefore, the order in C.M.A. is confirmed subject to the modification that the direction that the appellant is entitled to get cost of the appeal from the respondent will stand deleted.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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